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SUMMARY RECORD OF THE 23rd MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

later: Mr. TOMKA (Czechoslovakia)
(Vice-Chairman)

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ITS FORTY-FOURTH SESSION (continued)

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 129: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FOURTH SESSION (continued) (A/47/10)

1. Mr. FERRARI BRAVO (Italy) said that although there was no denying the links between the Draft Code of Crimes against the Peace and Security of Mankind and the possible establishment of an international criminal court, they should be the subject of different legal instruments; under current circumstances, the establishment of an international criminal court, to which he restricted his comments, was more urgent than the adoption of the draft Code, which once agreed upon should come under the jurisdiction of the court.
2. While his delegation concurred with the views expressed by the delegation of the United Kingdom on behalf of the European Community and its member States, he wished to add some complementary remarks on behalf of Italy.
3. The need to establish an international criminal jurisdiction had already been felt at the time of the League of Nations, although after the Nürnberg and Tokyo trials, it had seemed less urgent, perhaps because of the general feeling that the lesson of war had vaccinated mankind against a repetition of the atrocities of the Second World War. The Convention of 1948 on the Prevention and Punishment of the Crime of Genocide had not been completed by the establishment of a criminal jurisdiction. Subsequently, the long period of the so-called cold war had seen the emergence of new forms of criminal activity such as the hijacking of and attacks against civil aircraft or ships, which had given rise to widespread general concern and to the need for punishment. A series of conventions had been drawn up, based on the principle "try or extradite", whose success had contributed to expanding what was currently known as "international criminal law".
4. In addition to new scourges, such as drug trafficking, that demanded punishment at the international level, the world had witnessed a resurrection of criminal activities in the form of crimes of war or crimes against humanity, whose frequency required swift action.
5. Accordingly, many Governments, including his own, felt that it was time to take further steps towards effective punishment of international crimes by making serious efforts to bring their perpetrators before an impartial international jurisdiction, which should be achieved by the finalization of the text of a convention establishing a universal criminal court. He stressed the universal nature of the court as although a partial, ad hoc solution might be useful in a special contingency, it could not sufficiently guarantee real justice. There was no denying the difficulties of the proposed endeavour, as the establishment of an international criminal court would necessarily impinge on State sovereignty, although some degree of encroachment was indispensable to ensure the basic rights of mankind.

(Mr. Ferrari Bravo, Italy)

6. A light and flexible body should be established by treaty, for example by electing a small bureau entrusted with the task of constituting, each time the need arose, a tribunal composed of persons of recognized independence and impartiality who could serve as judges. The only requirement would be a list of persons designated by States parties to the convention establishing the court, from which the bureau would draw the appropriate names. He cited as a model the European court for conciliation and arbitration recently agreed upon, at the level of experts, by the States members of the Conference on Security and Cooperation in Europe.

7. The jurisdiction of the criminal court should be confined to private persons and should of course include State officials. Punishment of States themselves raised different issues and would probably be better addressed in a different context. The jurisdiction of the court ratione materiae should extend to all the universal conventions that constituted international criminal law, including the Geneva Conventions and Protocols. The court's jurisdiction should be binding, a view that might not be shared by the majority of delegations. However, he invited those opposed to a binding jurisdiction to reconsider and to bear in mind the threat to the credibility of the proposed system that too low a threshold would entail. The establishment of an international criminal court was a major innovation that could prove counter-productive in the long run, if public opinion did not clearly perceive a strong determination to combat international crime.

8. It was essential that accused persons should feel that the norms they might have violated concerned them directly, and the rules applicable should be contained in international legal instruments and also translated into national legal systems, at least as far as the definition of crime and the appropriate punishment was concerned. It also went without saying that accused persons should enjoy all the rights related to a fair trial, as recognized by the basic instruments of international law.

9. He concluded by expressing his confidence that the high professional level of the Commission would allow it to discharge its mandate in the most effective way.

10. Miss CHATOOR (Trinidad and Tobago), speaking on behalf of the States members of the Caribbean Community (CARICOM), said that the Caribbean Community supported the establishment of an international criminal jurisdiction and an international criminal court, which should have exclusive jurisdiction over the most serious international crimes. Although criminal trials of individuals had traditionally been before national courts, that was not the only workable mechanism, and an international criminal court could be a viable alternative to domestic criminal trials and extradition. The preference expressed by some States for an international court with concurrent jurisdiction could provide those States that had serious reservations about exclusive jurisdiction with a workable compromise, and the Commission should further examine the practical application of the concept of concurrent jurisdiction at its next session.

(Miss Chatoor, Trinidad and Tobago)

11. Her delegation would not support a court which only had review jurisdiction, although, as it had stated the previous year, consideration could be given to the creation of a review mechanism within the court, whose determination would be referred to the plenary for a final decision. The establishment of a permanent court with its own registry and staff, which her delegation preferred, would enable the institution to formulate its particular jurisprudence and would render it less susceptible to possible manipulation.
12. Her delegation supported the suggestion made in paragraph 434 of the report that the court should be essentially a facility for States parties to its statute, and endorsed the view of the Working Group on an International Criminal Jurisdiction that the court's jurisdiction should not be binding upon States that became parties to its statute. Rather there should be a separate agreement whereby parties could decide whether the trial should be transmitted to the international court, determined in a domestic court of one State, or whether the accused should be extradited.
13. With regard to the structure and jurisdiction of the court, her delegation supported the proposal that the court should have its own statute in treaty form. In terms of composition, States parties to the court's statute could submit nominees of the highest integrity, with specific qualifications in the fields of international criminal law or international humanitarian law and the administration of justice, who would be selected to serve when a matter was brought before the court, a procedure which would reduce costs. However, in the long term her delegation envisaged a court with full-time judges whose structure could be similar to that of the International Court of Justice.
14. The court's competence should initially be restricted to those crimes of an international character defined in international conventions. When the draft Code of Crimes against the Peace and Security of Mankind came into force, the court's statute could be amended to include the crimes contained therein. Although events had led some delegations, including her own, to take the view that the draft Code and the court should be considered separate items, she observed that the draft Code could, as had been noted by the Commission in paragraph 463 of its report, be "one of the international instruments defining offences of an international character which would be subject to the competence of the court". For the draft Code to be a viable international legal instrument, there had to be some implementing apparatus, in that instance, an international court.
15. With regard to its administrative arrangements, the court should be part of the United Nations system so as to be able to benefit, in particular, from the Organization's expertise in administrative and budgetary procedures.
16. The court could operate, at least initially, with a very small staff who might rely on the facilities of the Registry of the International Court of Justice. However, her delegation did not support the proposal that the Office

(Miss Chatoor, Trinidad and Tobago)

of the United Nations Legal Counsel could perform registry functions, although its officers could serve as advisers. Wherever possible, the court should sit in the State in which the alleged offence had been committed or within the same region, although due consideration should be given to security arrangements and to the willingness of the victim State to allow the trial to be held on its territory. In the future, it might be possible for the court to have a permanent home when its workload increased. Consideration could also be given to the court sitting from time to time in the territory of a State party.

17. An international criminal court would be much more effective than any other trial mechanism. Although a regional court could be useful in addressing a problem particular to a region, international criminals such as drug traffickers, terrorists or traffickers in arms did not confine their activities to any one region and it was doubtful whether an institution less than a court could gain widespread respect and support.

18. Regarding applicable law, each State party to the court's statute should ensure that its domestic legislation gave effect to the relevant international conventions, thereby enabling the court to refer to national as well as international criminal law during its deliberations. Consideration could also be given to the sources stated in Article 38 of the Statute of the International Court of Justice. The court's initial rules of procedure could be annexed to the statute and supplementary rules added as practice developed. States' domestic rules of procedure could also serve as a guide, and the Commission might also wish to examine the differences between and the similarities in State practice.

19. Concerning the matter of penalties, she said that consideration could be given to the application of the national practice of the victim State or States or of principles common to all nations. Her delegation also believed that the accused individual should be present during his trial.

20. In conformity with its preference for a permanent court, her delegation supported the establishment of an independent standing prosecutorial organ whose expertise would be available to small States. The prosecutor would have functions similar to those of a domestic prosecutor, and the department in question would investigate, collect and produce all the necessary evidence and prosecute at trials.

21. Her delegation supported the Working Group's recommendation that transfer to the court should not be regarded as extradition. As the monitoring and implementation of sentences might vary, their administration should be subject to the supervision of the court and the Commission should give further consideration to the development of a workable provision. The question of the place where sentence of imprisonment would be served should be considered in further detail, as small States might hesitate to have the term of imprisonment served in their own prisons.

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(Miss Chatoor, Trinidad and Tobago)

22. Her delegation supported the proposal made by the Working Group for the handing over of the accused, pursuant to which a State which had accepted the jurisdiction of the court with respect to an offence was obliged to hand over an accused person to it at the request of another State party which had accepted the same obligation. In the case of multiple requests from States, including from States which had accepted the court's jurisdiction or from the court itself, the requested State should be able to choose which request to accept.

23. Recent international developments and public statements by world leaders and government representatives had underlined the usefulness of and given encouragement to the idea of an international criminal court. The Commission had once again shown its willingness to continue to work for the establishment of an international criminal court, whose potential could only be realized through international cooperation, and which would meet the urgent need to bring to justice the perpetrators of the daily breaches of international humanitarian law and the violence associated with transnational criminal activities. The time was ripe for an international court to be established, and it was vital that the opportunity did not slip by.

24. Mr. Tomka (Czechoslovakia), Vice-Chairman, took the Chair.

25. Mr. VOICU (Romania) noted with satisfaction that the proposal for the mechanism of an international criminal court, put forward before the Second World War by a Romanian lawyer and diplomat, Mr. V. V. Pella, had been included in the appendix to the report of the Working Group on an International Criminal Jurisdiction (A/47/10, annex). Mr. Pella had argued that crime and justice had different colours and meanings in different national jurisdictions and that a system of international justice was therefore impossible without an international judicial organ. In the absence of such an organ for the trial of crimes against the peace and security of mankind, there could be no serious codification of international penal law and the world would go on living in judicial anarchy under the threat of the use of force.

26. Consequently, one of the most urgent tasks for the international community was to establish a flexible system of international criminal justice. The Commission's current report clearly recognized the need to begin the drafting of a statute for such a system, which would provide a permanent and neutral mechanism for determining matters of individual criminal liability.

27. While Governments might be accorded more time to formulate specific opinions on the far-reaching propositions submitted by the Working Group, the General Assembly should at its current session renew the Commission's mandate to continue and complete its work on drafting the statute of an international criminal court. In fulfilling its mandate, the Commission should take into account the observations and suggestions formulated during the current debate. Interested States should have a further opportunity to provide more

(Mr. Voicu, Romania)

detailed comments by early 1993. That could also be done in the replies requested by the Secretary-General on the draft Code of Crimes against the Peace and Security of Mankind. In its future work, the Commission should continue to use the valuable proposals formulated by non-governmental organizations, such as the Foundation for the Establishment of an International Criminal Court and the International Association of Penal Law, which had been very active in the field of international criminal law. His delegation also commended the initiative of Canada to convene at Vancouver early in 1993 an international meeting of experts in that field.

28. With regard to the substance of the draft statute, the Commission should follow the specific recommendations submitted on the subject in 1992. The court's jurisdiction should be limited to crimes of an international character, as defined in relevant international treaties in force, as well as in the draft Code of Crimes against the Peace and Security of Mankind. During the first phase of its operations, at least, such a court should exercise jurisdiction only over private persons, as distinct from States. The draft statute should also make clear that the future court must guarantee due process, independence and impartiality in its procedures.

29. The Commission's work on the draft statute was a significant contribution to the Decade of International Law. In the current post-cold war era, people everywhere had high expectations for a new world order in which peace was more than the absence of war and justice more than a dream. By providing a clear and specific mandate to the Commission to continue and complete its drafting of the statute of an international criminal court which would serve the rule of law in the world community of nations, the Committee would be assisting in the task of constructing that new international order.

30. Mrs. GOLAN (Israel) said that her generation had witnessed and had been a victim of the most barbaric international crime ever committed, namely, the genocide perpetrated by the Nazi regime. The Allied Powers had rightly established an ad hoc tribunal at Nürnberg after the Second World War to judge the individuals chiefly responsible for that and other crimes against humanity. To the extent that the Nürnberg Tribunal was recognized as the precursor of the proposed international court which would try such criminals, it must also be acknowledged that the Nürnberg trials had been held under circumstances radically different from those likely to prevail when the court was called upon to operate. A consensus had existed at the time among all the Members of the United Nations represented at Nürnberg as to the extreme criminality and bestiality of the acts attributed to the accused and the standards by which they must be judged. The accused had already been in the custody of the Allied Powers, and the question of how they should be handed over, and to whom, had thus not arisen; nor had the question of alternate venues arisen, for the judges had represented the victims, and the State of nationality of the accused, the Third Reich, had been unconditionally vanquished.

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(Mrs. Golan, Israel)

31. In the contemporary world, however - and after more than 40 years of deliberation - there was no code of international crimes agreed upon by the international community as a whole. Indeed, the proposed list of crimes included some which paled beside the atrocities with which the Nazis had been charged.

32. Her delegation had already expressed its concern at some features of the draft Code of Crimes under which individuals could be charged and prosecuted, possibly before an international criminal court, and had advised the Commission to reconsider the scope of the offences to be included therein with a view to limiting it to the most serious crimes, those recognized by all as crimes against peace and humanity.

33. The desirability or feasibility of establishing an international criminal court and the elaboration of a code of crimes against the peace and security of mankind were inseparably linked, since in order for such a court to enlist the full support of the world community, its jurisdiction must be based on universally accepted principles. It was difficult to accept that States would divest themselves of their national sovereignty in order to create a court which would compete with their own jurisdiction, unless the competence of such a court, being limited to the most heinous crimes, was beyond question.

34. As to the reference in the Working Group's report to situations where an international trial system might prove useful (A/47/10, para. 420), it was reasonable to expect that a State which was reluctant to try the accused persons, for the reasons stated in the report would be equally reluctant to hand them over to an international court.

35. Moreover, no person should be in jeopardy of being handed over to an international court merely on the basis of a State having filed an uninvestigated complaint against him with no proper extradition procedure or guarantee of his basic civil rights. There must be a mechanism to ensure that such a court would indeed serve international justice and would not be used by irresponsible States to further political ends.

36. A restrictive approach should be adopted on the question of the personal jurisdiction of the court so as not to undermine the national jurisdiction of the States concerned in criminal matters and to protect the rights of the accused.

37. Accordingly, the consent of the State in whose territory the crime had been committed, the State of which the accused was a national, the State which had been the victim of the crime or whose nationals had been the victims of the crime and the State which had custody of the accused would be needed in order for the court to be able to exercise its jurisdiction. Furthermore, if it was decided that those States must be parties to the statute and must have accepted the court's jurisdiction over the offence in question, and if one or

(Mrs. Golan, Israel)

more of that group of States did not meet that requirement, then the court should not be able to exercise its jurisdiction.

38. The right to institute proceedings should be limited to those States which had become party to the statute of the court.

39. With regard to bringing defendants before a court, the proposition that the handing over of an alleged perpetrator to the court was not an extradition presented a major problem in respect of the fundamental rights protected by extradition treaties. The Working Group's proposal that arrangements for transfer could be set out in an annex to the statute, which would be binding, ipso facto, on States parties to the statute, was unacceptable, as was the proposed list of grounds which could not be cited for denying transfer.

40. With regard to the law to be applied, while the court should, in appropriate cases, be allowed to apply national law, no provision was made for the role of the resolutions of international organizations, as they were not legislative bodies.

41. Lastly, the fundamental issue of ensuring due process of law had not been sufficiently considered in the report. A system of preliminary hearings in which the adequacy of the evidence against the accused would be tested and the accused heard, should be required before prosecution was initiated. In addition, it might be necessary to give the States concerned the right of appeal to the court, not only against the prosecutor's decision not to prosecute, but also against the decision to prosecute.

42. Mr. SCHARIOTH (Germany) said that the Working Group's report had spelled out very clearly why an international criminal court was urgently needed. Since 1945, abhorrent crimes against humanity had gone unpunished owing to insufficient prosecution at the national level and to the complete absence of an international trial mechanism. Where perpetrators of such crimes could be certain of impunity and where flagrant disregard of international law entailed no personal consequences for those responsible, the legal and binding character of norm themselves was called into question. In order to be effective therefore, international criminal law needed a trial mechanism capable of prosecuting its violators.

43. While the Working Group's report had revealed the multitude of technical and legal difficulties that must be overcome, there was a broad consensus that an international criminal court as outlined by the Commission was at least not impossible. Some delegations had expressed certain reservations about the timing and had indicated a preference for another round of written comments to be considered by the Commission, with the relevant decision being postponed yet another year. The Committee's debates, however, did not take place in a vacuum. Serious violations of humanitarian law were currently occurring and people everywhere, not only the victims of such deeds, were expecting a clear

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(Mr. Scharioth, Germany)

signal that the international community was determined not to tolerate any longer the flouting of the most basic norms for the protection of international peace and security. The Commission itself, after several years of in-depth studies, had indicated that it was prepared to take up the issue immediately and to draft a treaty along the lines set out in its report. In those circumstances, no one would understand it if the Committee did not unequivocally recommend to the General Assembly that the Commission should continue its work as a matter of top priority. If some delegations felt that States should be given the opportunity to supply more detailed comments, States should be asked to do so by early 1993 so as to enable the Commission to take them into account during its session of that year.

44. His delegation welcomed the flexible and realistic approach adopted by the Working Group, whose members had clearly expressed themselves on a number of minimum requirements for the drafting of the statute. For the reasons set forth in the Working Group's Report, the international criminal mechanism should be conceived neither as an institution that merely observed proceedings at the national level nor as a review mechanism. What was needed was a court in the proper sense in order to fill the void that existed where no prosecution whatsoever took place at the national level.

45. He agreed with the view that if the principal reason for establishing an international court was insufficient enforcement of existing criminal norms at the national level, then it would suffice to set up an optional and concurrent international jurisdiction which would supplement national jurisdiction without superseding it. The Committee could not, however, overlook the fact that States would not be easily moved at the current time to totally cede to an international court their basic jurisdiction over crimes committed on their territory or against their own population.

46. Since it was difficult to foresee whether and to what extent a new international court in the field of criminal law would be capable of exercising its functions, his Government endorsed the Working Group's suggestion that the court should not be a full-time standing body. His delegation fully shared the view that the law to be applied by the court should be derived only from international treaties in force and must be specified in the statute of the court. In accordance with the principle nullum crimen sine lege, those norms had to exist in the form of rules directly obligating the individual. The statute should be very precise on that point.

47. The guarantee of certainty and clarity of the law, particularly in the field of penal law, also applied to the penalties to be imposed. The statute needed provisions dealing with the question of penalties for those cases where the applicable substantive law did not specify the penalties. His delegation felt that the death penalty should be ruled out. Questions such as extenuating circumstances or defences also had to be addressed in the statute, which should contain sufficiently precise rules for cases where the draft Code of Crimes did not apply.

(Mr. Scharioth, Germany)

48. The statute should not be linked too closely with the draft Code of Crimes. His delegation agreed that the material jurisdiction of the court should not be limited to the draft Code, pending its entry into force, but should also cover other norms of international criminal law. If the entry into force of the draft Code was delayed for an extended period owing to lack of ratifications, the international criminal court should be able to function independently.

49. His delegation also agreed that a State should be able to become a party to the statute of the court without necessarily becoming a party to the Code. Too close a link between the statute and the Code could constitute an obstacle to States wishing to become parties to the statute and could thus diminish the chances of an international criminal court attaining universal membership.

50. Ms. LITTLE (Jamaica) said that her delegation fully supported the statement made by the representative of Trinidad and Tobago on behalf of the member States of CARICOM. It was also broadly in support of the approach taken by the Working Group.

51. Since the proposal for the establishment of an international criminal court had come from a small State, Trinidad and Tobago, it was gratifying that the Working Group was sensitive to the concerns of small States and made special mention of cases where the criminal justice system of a small State was overwhelmed by the magnitude of a particular offence. The Working Group also referred to the problems small States would face if the State in which the offence was committed was invariably chosen as the venue of the court, and if sentences of imprisonment were served in the prisons of the complaining State. At the same time, small States realized that all relevant considerations and interests would have to be reflected in the establishment of an international criminal court.

52. Her delegation generally supported the seven basic propositions set out in paragraph 396 of the Working Group's report. However, it believed that the statute should include a provision prohibiting the court from prosecuting a person of whom a State party had gained custody by recourse to measures which, in the opinion of the court, violated international law. Such a provision was warranted by current trends in world affairs, and would serve to buttress the territorial integrity of small States. A formulation which merely called upon a State to hand over to the court a person within its jurisdiction would be too wide, since extraterritorial jurisdictional claims might lead to incursions by some States into the territory of others. The statute should confine the obligation to hand over persons to the court to States in whose territory the offender was present; such a provision would be consistent with the approach taken in a number of international conventions establishing particular crimes. In its report the Working Group referred to cases where a State party to the court's statute had lawful custody of an alleged offender (A/47/10, para. 456); she took the reference to "lawful custody" to mean that the court would be entitled to inquire into the circumstances under which that

(Ms. Little, Jamaica)

State had gained custody of the offender and, if it was determined that the custody was not lawful, the court would not prosecute him, because the absence of lawful custody would mean that the State party had no right to hand over the offender to the court.

53. Under the typical aut dedere aut punire convention, a State in whose territory an alleged offender was found was obliged, if it did not extradite him, to submit the case to its competent authorities for prosecution. All States parties to such a convention which had established jurisdiction over the offence in the manner specified in the convention would be entitled to request the extradition of the offender. If all the States parties to such a convention were also parties to the court's statute, then article 30, paragraph 3, of the Vienna Convention on the Law of Treaties would apply, and jurisdiction could be ceded to the court by the State in whose territory the offender was found. If only the States parties which had the right to request extradition, as distinct from all States parties to the Convention, were parties to the statute, then article 30, paragraph 1, of the Vienna Convention would apply, and the court's statute would prevail among those States; but, in the case of States that were parties to the convention but not to the court's statute, the convention would prevail. In that latter situation a State party to the convention but not to the court's statute would be entitled to insist on extradition of the offender.

54. It seemed therefore that "ceded jurisdiction", as discussed in the Working Group's report (A/47/10, para. 456) would work only between States parties to both the aut dedere aut punire convention and the court's statute; States parties to the convention but not to the statute would always be able to insist on extradition of an offender and thus prevent his transfer to the court. However, if a State in the latter category did not object to the transfer of the offender to the court, prosecution by the court should be able to proceed. Further consideration needed to be given to the ramifications of that situation, which could effectively render the court non-functional. If an international criminal court was established, States parties to aut dedere aut punire conventions should be specifically targeted in an effort to encourage them to become parties to the court's statute.

55. The Working Group envisaged that the jurisdiction of the court would be concurrent with that of national courts, but offered no explanation as to the meaning of the term "concurrent jurisdiction". If the term meant that the court's statute would provide for, or accommodate, jurisdiction by national courts in respect of offences over which the court also had jurisdiction, confusion would result. It was clear that States parties to aut dedere aut punire conventions would have jurisdiction over certain offences in respect of which the court had jurisdiction; such jurisdiction was the inevitable result of the application of the law of treaties, and in particular the rules governing the relationship between successive treaties dealing with the same subject-matter. A clear explanation was needed.

(Ms. Little, Jamaica)

56. Her delegation had some difficulty with the suggestion in paragraph 446 of the report that the State party to the statute would be able to accept the jurisdiction of the court ad hoc in relation to a particular offence. It felt that acceptance should be in advance and for a specific offence in a treaty to which the State was a party. Ad hoc ex post facto acceptance in relation to a particular offence could be seen as provocative and could sour the relations between the accepting States and other States, especially the State of which the offender was a national.

57. In addition to the arguments against a court outlined in paragraphs 425 to 428 of the report, there was another factor which might inhibit acceptance by States of the court's statute, and which might even cause States to entertain reservations about their acceptance of aut dedere aut punire conventions, which was that the right of States parties to such conventions to prosecute offenders in their courts if they did not extradite them could be overridden by a contrary obligation arising under Article 103 of the Charter of the United Nations. That situation had been confirmed by the International Court of Justice in its recent ruling on questions of interpretation and application of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation arising from the aerial incident at Lockerbie. Thus, prospective States parties to the treaty establishing the statute of an international criminal court might well wonder whether there was any point in accepting the court's jurisdiction in respect of a particular offence, if a decision could be taken by the Security Council to require the surrender of the alleged offender to a particular State. The system of the paramountcy of the Charter obligation under Article 103 imposed a special burden on the Security Council to act with the utmost care in the discharge of its responsibilities when it considered taking decisions which conflicted with the rights and obligations of States under multilateral and other treaties; otherwise States would lose respect for, and faith in, the consensual regimes they had established under international conventions.

58. Her delegation believed that the General Assembly should give specific instructions to the Commission to draft the statute for an international criminal court; delegations would then be in a better position to offer definitive news on the establishment of such a court.

59. Mr. MONTES de OCA (Mexico) said that his delegation noted with satisfaction that the Commission had fully discharged the mandate of the General Assembly, which had been to analyse the question of the establishment of an international criminal court or other international criminal trial mechanism. Among the merits of the proposal which was before the members of the Committee was its high degree of flexibility, the confinement of the court's jurisdiction to crimes recognized as such under existing international conventions, the optional basis on which the court's jurisdiction was to be established and the guarantee of independence and impartiality in its procedures.

(Mr. Montes de Oca, Mexico)

60. His delegation shared the view that the machinery for international judicial assistance was inadequate for the prosecution of crimes of an international character. Nevertheless, before the Commission could be given a mandate to proceed with the preparation of a draft statute for an international criminal jurisdiction, the views of Governments should be sought; his delegation therefore proposed that a deadline should be established for the transmittal of such views.

61. Mr. HAMAI (Algeria) said that the term of office of the Commission's members coincided with the mid-point of the United Nations Decade of International Law. That offered an additional opportunity to prepare for what should be the crowning achievement of the Decade, namely, the convening of a third international peace conference which could make a significant contribution to the implementation of the Declaration on the Right of Peoples to Peace, adopted by the General Assembly in its resolution 39/11, and to the establishment of truly democratic, equitable and peaceful international relations.

62. His delegation reaffirmed its support in principle for the establishment of an international criminal court, the existence of which was closely linked to the elaboration of a code of crimes against the peace and security of mankind. Indeed, there could be no such code unless there was an international criminal jurisdiction to administer it.

63. Some delegations had expressed reservations concerning the desirability or feasibility of establishing such a court; for that reason, Algeria noted with satisfaction that the Commission had adopted a realistic approach in proposing to prepare a draft statute in the form of a multilateral treaty. That approach was based on the primary characteristic of international law, namely, the freedom of sovereign States to conclude international agreements. Such a formula would ensure the broadest possible support for the future court. It should be noted, however, that the court's statute and the draft Code of Crimes should not constitute separate instruments.

64. His delegation did not agree that in the first phase of its operations, the court should be an ad hoc body, the composition of which would be determined in each specific case, and which would be called into operation as required. Criminal law had to be strict, otherwise, the credibility and effectiveness of the draft statute could not be ensured.

65. With regard to the court's jurisdiction, a number of alternatives had been proposed, ranging from binding and exclusive jurisdiction to optional and concurrent jurisdiction, or some combination of the alternatives. In his delegation's view, a choice among those alternatives could be made only in the light of the objectives sought. The Commission's mandate clearly indicated the link between the draft Code of Crimes and an international criminal court; logically, therefore, the court's jurisdiction could extend only to the crimes specified in the draft Code, could only be compulsory and exclusive, and should cover cases heard both in the first instance and on appeal.

(Mr. Hamai, Algeria)

66. In calling for the preparation of a draft Code of Crimes, the General Assembly had intended to sanction crimes which were serious, fundamental and genuinely prejudicial to the peace and security of mankind. It was important, therefore, not to overwhelm the future court by giving it jurisdiction over offences which, however serious, were not crimes against humanity. The purposes and principles of the Charter of the United Nations should be the defining criteria in that regard.

67. Concerning the question of the relationship between an international criminal jurisdiction and the Security Council, as referred to in paragraphs 81 to 87 of the report, his delegation believed that the future court and the Council should be separate and independent of one another. While the Council was a political body acting in accordance with the powers attributed to it under the Charter, the future court would be a judicial organ to which political considerations did not apply, and which would be motivated solely by the impartial administration of justice.

The meeting rose at 5.05 p.m.